

## DEPARTMENT OF COMMERCE

## International Trade Administration

[A-570-892]

**Carbazole Violet Pigment 23 from the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**FOR FURTHER INFORMATION CONTACT:** Deborah Scott or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-2657 or (202) 482-0649, respectively.

**SUPPLEMENTARY INFORMATION:****Background**

On December 1, 2008, the Department of Commerce (the Department) published in the **Federal Register** its notice of opportunity to request an administrative review of the antidumping duty order on carbazole violet pigment 23 (CVP 23) from the People's Republic of China (PRC). See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 73 FR 72764 (December 1, 2008). In response, on December 30, 2008, Trust Chem Co., Ltd. (Trust Chem) requested an administrative review of the antidumping duty order on CVP 23 from the PRC for the period December 1, 2007 through November 30, 2008. On February 2, 2009, the Department published a notice of initiation of this administrative review. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 74 FR 5821 (February 2, 2009). The current deadline for the preliminary results of this review is September 2, 2009.

**Extension of Time Limit for Preliminary Results**

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to complete the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the 245-day time

limit for the preliminary results to a maximum of 365 days.

The Department has determined it is not practicable to complete this review within the statutory time limit because we require additional time to develop the record fully and analyze information related to Trust Chem's U.S. sales and the market economy purchases made by Nantong Longding Chemical Co. Ltd., the manufacturer which sold CVP 23 to Trust Chem. For these reasons, it is impracticable to complete the preliminary results of this administrative review within the originally-specified time limit. Accordingly, the Department is extending the time limit for completion of the preliminary results of this administrative review until no later than December 22, 2009, which is 356 days from the last day of the anniversary month. We intend to issue the final results no later than 120 days after publication of the preliminary results notice.

This notice is issued and published in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: July 30, 2009.

**John M. Andersen,**

*Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

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## DEPARTMENT OF COMMERCE

## International Trade Administration

[A-201-822]

**Stainless Steel Sheet and Strip in Coils From Mexico; Preliminary Results of Antidumping Duty Administrative Review and Intent Not To Revoke Order in Part**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** In response to requests from respondent, ThyssenKrupp Mexinox S.A. de C.V. (Mexinox S.A.) and Mexinox USA, Inc. (Mexinox USA) (collectively, Mexinox) and Petitioners,<sup>1</sup> the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on stainless steel sheet and strip in coils (S4 in coils) from Mexico. This administrative review covers imports of subject

merchandise from Mexinox S.A. during the period July 1, 2007, to June 30, 2008.

We preliminarily determine that sales of S4 in coils from Mexico have been made below normal value (NV). The Department also finds that revocation of the order with respect to Mexinox is not warranted under 19 CFR 351.222(b)(2). If these preliminary results are adopted in our final results of this administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties based on the difference between the constructed export price (CEP) and NV. Interested parties are invited to comment on these preliminary results. Parties who submit argument in these proceedings are requested to submit with the argument: (1) A statement of the issues; (2) a brief summary of the argument; and (3) a table of authorities.

**DATES:** *Effective Date:* August 7, 2009.

**FOR FURTHER INFORMATION CONTACT:** Patrick Edwards, Brian Davis, or Angelica Mendoza, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-8029, (202) 482-7924, or (202) 482-3019, respectively.

**SUPPLEMENTARY INFORMATION:****Background**

On July 27, 1999, the Department published in the **Federal Register** the *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Stainless Steel Sheet and Strip in Coils From Mexico*, 64 FR 40560 (July 27, 1999) (Order). On July 11, 2008, the Department published a notice entitled *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 73 FR 39948 (July 11, 2008), covering, *inter alia*, S4 in coils from Mexico for the period of review (POR) (*i.e.*, July 1, 2007, through June 30, 2008).

On July 30, 2008, Mexinox requested (1) revocation of the antidumping order on S4 in coils from Mexico with respect to Mexinox and (2) that the Department conduct an administrative review of Mexinox for the period from July 1, 2007, through June 30, 2008. On July 31, 2008, in accordance with 19 CFR 351.213(b)(1), Petitioners also requested that the Department conduct an administrative review of Mexinox for the period July 1, 2007, through June 30, 2008. On August 26, 2008, the Department published in the **Federal Register** a notice of initiation of this

<sup>1</sup> Petitioners are Allegheny Ludlum Corporation, AK Steel Corporation, and North American Stainless.

antidumping duty administrative review covering the period July 1, 2007, through June 30, 2008. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 73 FR 50308 (August 26, 2008). On September 2, 2008, the Department issued an antidumping duty questionnaire to Mexinox. Mexinox submitted its response to section A of the questionnaire (AQR) on October 7, 2008, and its response to sections B, C, D, and E of the questionnaire (BQR, CQR, DQR, and EQR, respectively) on November 12, 2008. On December 12, 2008, Mexinox submitted factual information for the Department's consideration in the instant review. On January 29, 2009, the Department issued a supplemental questionnaire for sections A through C. The Department received comments from Petitioners on February 6, 2009<sup>2</sup> and February 13, 2009.<sup>3</sup> Because it was not practicable to complete this review within the normal time frame, on March 2, 2009, the Department published in the **Federal Register** a notice extending the time limits for this review. *See Stainless Steel Sheet and Strip in Coils from Mexico; Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 9079 (March 2, 2009). This extension established the deadline for these preliminary results as July 31, 2009. Mexinox responded to the Department's January 29, 2009, supplemental questionnaire on March 4, 2009 (SQR). On March 16, 2009, the Department received comments on Mexinox's AQR, BQR, CQR, and SQR from Petitioners. On March 31, 2009, and April 8, 2009, the Department issued section D and section E supplemental questionnaires, respectively. On May 1, 2009, Mexinox submitted its response to the Department's March 31, 2009, section D supplemental questionnaire (SDQR). On May 12, 2009, the Department issued a second section D questionnaire. On May 19, 2009, Mexinox submitted its response to the Department's April 8, 2009, section E supplemental questionnaire (SEQR) and on June 3, 2009, it submitted its response to the Department's second section D supplemental questionnaire (SSDQR). On June 4, 2009, the Department issued a second supplemental questionnaire covering sections A through C, and on June 11, 2009, the Department issued a third supplemental questionnaire covering section D. On July 6, 2009, Mexinox filed its collective responses to the Department's June 4, 2009, second

supplemental questionnaire as well as the Department's June 11, 2009, third section D supplemental questionnaire (collectively, SSQR).

#### Period of Review

The POR is July 1, 2007, through June 30, 2008.

#### Notice of Intent Not To Revoke Order in Part

On July 30, 2008, Mexinox requested that, pursuant to 19 CFR 351.222(b)(2), the Department revoke it from the antidumping duty order on S4 in coils from Mexico at the conclusion of this administrative review. Mexinox submitted along with its revocation request a certification stating that: (1) The company sold subject merchandise at not less than NV during the POR, and that in the future it would not sell such merchandise at less than NV; (2) the company has sold the subject merchandise to the United States in commercial quantities during each of the past three years, and (3) the company agrees to immediate reinstatement of the antidumping duty order, if the Department concludes that the company, subsequent to revocation, sold the subject merchandise at less than NV. *See* 19 CFR 351.222(e).

In determining whether or not to revoke an antidumping duty order with respect to a particular producer/exporter under 19 CFR 351.222(b)(2), the Department considers whether: (1) The producer/exporter has sold the subject merchandise at not less than NV for a period of at least three consecutive years; (2) the producer/exporter has agreed to immediate reinstatement of the order if the Department finds that it has resumed making sales at less than NV; and (3) the continued application of the order is not otherwise necessary to offset dumping.

In this case, our preliminary margin calculation shows that Mexinox sold the subject merchandise at less than NV during the current review period. *See* "Preliminary Results of Review" section below. Moreover, Mexinox received antidumping duty margins above *de minimis* in the previous two administrative reviews. Mexinox makes its request predicated on the assumption that an appeal will result in recalculations for both administrative reviews of margins at zero or *de minimis*. However, it is not the Department's policy to speculate regarding potential future outcome of appeals when determining whether revocation of the merchandise produced and exported by a particular company from an existing antidumping duty order is warranted. *See, e.g., Certain*

*Steel Concrete Reinforcing Bars From Turkey; Final Results of Antidumping Duty Administrative Review and Determination To Revoke in Part*, 73 FR 66218, 66219 (November 7, 2008). While we acknowledge that the Department's determinations in the two prior segments of this proceeding are currently before NAFTA panels, there is no final and conclusive judgment supporting Mexinox's arguments or invalidating the Department's findings in the prior administrative reviews. Moreover, Mexinox's certification is based on the contention that the Department should offset sales made at less than NV with the sales that were made at not less than NV. In other words, Mexinox suggests that it had sales of the subject merchandise at less than NV during the relevant time period. However, 19 CFR 351.222(E)(1)(ii) requires the company to certify that the company sold its subject merchandise at not less than NV during each of the past three consecutive years. Therefore, we preliminarily find that Mexinox has sold subject merchandise at less than NV within the period of at least three consecutive years. Accordingly, we preliminarily determine, pursuant to 19 CFR 351.222(b)(2), that revocation of the order with respect to Mexinox is not warranted.

#### Scope of the Order

For purposes of the order, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7219.13.00.31, 7219.13.00.51, 7219.13.00.71, 7219.13.00.81, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36,

<sup>2</sup> Comments were in regard to Mexinox's AQR, BQR, and CQR.

<sup>3</sup> Comments were in regard to Mexinox's DQR.

7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80.

Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise subject to the order is dispositive.

Excluded from the scope of the order are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled; (2) sheet and strip that is cut to length; (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more); (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm); and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTSUS, "Additional U.S. Note" 1(d).

In response to comments by interested parties, the Department has determined that certain specialty stainless steel products are also excluded from the scope of the order. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi,

yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves for compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of the order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of between 0.002 and 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of the order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III."<sup>4</sup>

Certain electrical resistance alloy steel is also excluded from the scope of the order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344

and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36."<sup>5</sup>

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of the order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17."<sup>6</sup>

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of the order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).<sup>7</sup> This steel is similar to ASTM grade 440F, but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo." The second excluded stainless steel strip in coils is similar to AISI 420-J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and

<sup>5</sup> "Gilphy 36" is a trademark of Imphy, S.A.

<sup>6</sup> "Durphynox 17" is a trademark of Imphy, S.A.

<sup>7</sup> This list of uses is illustrative and provided for descriptive purposes only.

<sup>4</sup> "Arnokrome III" is a trademark of the Arnold Engineering Company.

0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per square micron. An example of this product is "GIN5" steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6."<sup>8</sup>

#### Date of Sale

Mexinox reported the invoice date as the date of sale for certain sales made in all channels of distribution in both the home and U.S. markets. For all other sales in both the home market and the United States, Mexinox reported the date of the binding contract as the date of its sales made pursuant to these binding contracts. Specifically, due to volatile metal prices in recent years, Mexinox stated that it entered into binding contracts fixing prices and quantities for specified sales of subject merchandise for certain customers. See Mexinox's AQR at pages A-50 through A-51. See also Mexinox's SQR at page A-46.

The Department normally uses invoice date as the date of sale, but may use a date other than the invoice date, if the Department is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale. See 19 CFR 351.401(i). For purposes of this review, we examined whether invoice date, contract date, or another date better represents the date on which the material terms of sale were established for all of Mexinox's sales to customers in the home and U.S. markets. The Department, in reviewing Mexinox's questionnaire responses, found that the material terms of sale for all sales are set on the date on which the invoice is issued. See Mexinox's AQR at attachments A-5-B through A-5-E for sample sales documents in the U.S. and home market for each channel of distribution as well as for a fixed-price contract. See also Mexinox's SSQR at Attachments A-32-A through A-32-D for relevant written sales contracts and

documentation (*i.e.*, list of base prices, alloy surcharge sales contracts, analysis or quantities shipped under the contract, sample transaction(s): Contract sale, and sample transaction(s): Non-contract sale) between Mexinox and its customers who are part of the fixed-price contracts.

Mexinox explained that other than sales under binding, fixed-price contracts, both home market and U.S. sales by Mexinox generally involve the placement of a purchase order by the customer. See Mexinox's AQR at pages 54-55. Mexinox also states that the purchase order is not binding on either party, is subject to cancellation, and the quantities initially requested can be changed after the initial order date and up until the merchandise is released for shipment. See Mexinox's AQR at pages 54-55. See also Mexinox's AQR at 17-19. The sales order entered into Mexinox's system at the time of sale may include a provisional price term, however, the sales order acknowledgement sent to the customer after the order is placed does not contain a sales price. Instead, sales prices in both markets are subject to further negotiation up until the time of shipment and invoicing (with the final price included on the invoice) in order to accommodate rapidly changing market price conditions, including changes in steel alloy prices and alloy surcharges. See Mexinox's AQR at page 55. In instances in which there were changes to the material terms of sale after the invoice, Mexinox explained that credit or debit notes will be issued after invoicing to correct for any billing errors. See Mexinox's SQR at page 21.

In its SQR at page A-55, Mexinox states that the price and quantity for its sales made pursuant to the binding, fixed contracts are, "firmly established under the contract with the customer, and do not change between the contract date and the invoicing of material to the customer." However, in reviewing the record, the Department preliminarily finds that the material terms of sale (*e.g.*, price and quantity) are subject to, and in some instances did, change between the contract date and when Mexinox issued invoices to its customers for sales subject to these allegedly binding contracts. Specifically, we noted instances in which (1) Mexinox did not ship the full quantity specified under the contract and (2) the contracts specify ranges of alloy surcharges which are determined at the time of shipment.

Lastly, if the respondent or other party wants the Department to use a different date than invoice date, it must submit information that supports the use of a different date. In the instant

review, the Department, for purposes of these preliminary results, finds that Mexinox has not met its burden of proving that the material terms of its U.S. sales were set and were no longer subject to change prior to the invoice date. For a detailed discussion of our date of sale analysis, see "Analysis of Data Submitted by ThyssenKrupp Mexinox S.A. de C.V. for the Preliminary Results of the Antidumping Duty Administrative Review on Stainless Steel Sheet and Strip in Coils from Mexico" from Patrick Edwards and Brian Davis, International Trade Compliance Analysts, to the File, dated July 31, 2009 (Preliminary Analysis Memorandum).

Based on all of the above, we preliminarily determine that invoice date is the appropriate date of sale for all of Mexinox's home market and U.S. sales in this administrative review because it represents the date upon which the material terms of sale are established. This is consistent with previous administrative reviews of this order. See, *e.g.*, *Stainless Steel Sheet and Strip in Coils From Mexico; Preliminary Results of Antidumping Duty Administrative Review*, 73 FR 45708 (August 6, 2008) (2006-2007 Preliminary Results), unchanged in *Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review*, 74 FR 6365 (February 9, 2009) (2006-2007 Final Results), *Stainless Steel Sheet and Strip in Coils from Mexico: Amended Final Results of Antidumping Duty Administrative Review*, 73 FR 14215 (March 17, 2008) (2005-2006 Amended Final Results), and *Stainless Steel Sheet and Strip in Coils from Mexico; Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 35618 (June 21, 2006) (2004-2005 Preliminary Results) unchanged in *Stainless Steel Sheet and Strip in Coils From Mexico; Final Results of Antidumping Duty Administrative Review*, 71 FR 76978 (December 22, 2006) (2004-2005 Final Results).

#### Sales Made Through Affiliated Resellers

##### A. U.S. Market

Mexinox USA, a wholly-owned subsidiary of Mexinox S.A., which in turn is a subsidiary of ThyssenKrupp Stainless AG (see Mexinox's AQR at pages A-9 and A-19, respectively), sold subject merchandise in the United States during the POR to unaffiliated customers. Mexinox USA also made sales of subject merchandise to U.S. affiliate Ken-Mac Metals (Ken-Mac)

<sup>8</sup> "GIN4 Mo," "GIN5" and "GIN6" are the proprietary grades of Hitachi Metals America, Ltd.

which is an operating division of ThyssenKrupp Materials NA, Inc. (*id.* at pages A-15 and A-27), which is a subsidiary of ThyssenKrupp USA, Inc. (*id.* at page A-27), the primary holding company for ThyssenKrupp Stainless AG in the U.S. market (*id.* at page A-26). Ken-Mac purchased subject merchandise from Mexinox USA and further manufactured and/or resold the subject merchandise to unaffiliated customers in the United States during the POR. For purposes of these preliminary results of review, we have included both Mexinox USA's and Ken-Mac's sales of subject merchandise to unaffiliated customers in the United States in our margin calculation.

#### B. Home Market

Mexinox Trading, S.A. de C.V. (Mexinox Trading), a subsidiary of Mexinox S.A., resold the foreign like product, as well as other merchandise, in the home market during the POR. *See* Mexinox's AQR at page A-20. Mexinox S.A.'s sales to Mexinox Trading represented a small portion of Mexinox S.A.'s total sales of the foreign like product in the home market and constituted less than five percent of all home market sales. *See, e.g.,* Mexinox's AQR at page A-3. Because sales to Mexinox Trading of the foreign like product were below the five percent threshold established under 19 CFR 351.403(d), we did not require Mexinox S.A. to report Mexinox Trading's downstream sales to its first unaffiliated customer. This is consistent with the most recently completed administrative reviews of S4 in coils from Mexico. *See, e.g., 2006–2007 Preliminary Results* at 45711, unchanged in *2006–2007 Final Results*; *see also Stainless Steel Sheet and Strip in Coils from Mexico; Preliminary Results of Antidumping Duty Administrative Review*, 72 FR 43600, 43602 (August 6, 2007) (*2005–2006 Preliminary Results*), unchanged in *Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review*, 73 FR 7710 (February 11, 2008) (*2005–2006 Final Results*), and *2005–2006 Amended Final Results*; *see also 2004–2005 Final Results* at 35620 and accompanying Issues and Decision Memorandum at Comment 2.

#### Fair Value Comparisons

To determine whether sales of S4 in coils from Mexico to the United States were made at less than fair value (LTFV), we compared CEP sales made in the United States by both Mexinox USA and Ken-Mac to unaffiliated purchasers to NV as described in the "Constructed Export Price" and "Normal Value"

sections of this notice, below. In accordance with section 777A(d)(2) of the Tariff Act of 1930, as amended (the Act), we compared individual CEPs to monthly weighted-average NVs. For austenitic grade products where we are using a quarterly costing approach, as described in the "Normal Value" section below, we have not made price-to-price comparisons outside of a quarter to lessen the distortive effect of comparing non-contemporaneous sales prices during a period of significantly changing costs.

#### Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by Mexinox S.A. covered by the description in the "Scope of the Order" section above, and sold in the home market during the POR, to be foreign like product for purposes of determining appropriate product comparisons to U.S. sales. We relied on nine characteristics to match U.S. sales of subject merchandise to comparison sales of the foreign like product (listed in order of priority): (1) Grade; (2) cold/hot rolled; (3) gauge; (4) surface finish; (5) metallic coating; (6) non-metallic coating; (7) width; (8) temper; and (9) edge trim. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's original September 2, 2008, questionnaire.

#### Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we base NV on sales made in the comparison market at the same level of trade (LOT) as the export transaction. The NV LOT is based on the starting price of sales in the home market or, when NV is based on constructed value (CV), that of the sales from which selling, general, and administrative (SG&A) expenses and profit are derived. With respect to CEP transactions in the U.S. market, the CEP LOT is the level of the constructed sale from the exporter to the importer. *See Mittal Steel USA, Inc. v. United States*, 2007 Ct. Int'l Trade Lexis 138, at \*25 (Ct. Int'l Trade August 1, 2007).

To determine whether NV sales are at a different LOT than CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the customer. *See* 19 CFR 351.412(c)(2). If the comparison-market sales are at a different LOT, and the difference affects

price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV level is at a more advanced stage of distribution than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See, e.g., Final Determination of Sales at Less Than Fair Value: Greenhouse Tomatoes From Canada*, 67 FR 8781 (February 26, 2002) and accompanying Issues and Decision Memorandum at Comment 8; *see also Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products from Brazil; Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 17406, 17410 (April 6, 2005), unchanged in *Notice of Final Results of Antidumping Duty Administrative Review: Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products From Brazil*, 70 FR 58683 (October 7, 2005). For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and CEP profit under section 772(d) of the Act. *See Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1314–1315 (Fed. Cir. 2001). We expect that if the claimed LOTs are the same, the functions and activities of the seller should be similar. Conversely, if a party claims the LOTs are different for different groups of sales, the functions and activities of the seller should be dissimilar. *See Porcelain-on-Steel Cookware from Mexico: Final Results of Antidumping Duty Administrative Review*, 65 FR 30068 (May 10, 2000) and accompanying Issues and Decision Memorandum at Comment 6.

We obtained information from Mexinox regarding the marketing stages involved in making its reported home market and U.S. sales to both affiliated and unaffiliated customers. Mexinox provided a description of all selling activities performed, along with a flowchart and tables comparing the LOTs among each channel of distribution and customer category for both markets. *See* Mexinox's AQR at A-38 through A-39 and Attachments A-4-B and A-4-C.

Mexinox sold S4 in coils to end-users and retailers/distributors in the home market and to end-users and distributors/service centers in the United States. For the home market, Mexinox S.A. identified two channels of distribution described as follows: (1)

Direct shipments (*i.e.*, products produced to order); and (2) sales from inventory. Within each of these two channels of distribution, Mexinox S.A. made sales to affiliated and unaffiliated distributors/retailers and end-users. *See* Mexinox's AQR at page A-32. We reviewed the intensity of all selling functions Mexinox S.A. claimed to perform for each channel of distribution and customer category. For certain functions, such as: (1) Pre-sale technical assistance; (2) processing of customer orders; (3) sample analysis; (4) prototypes and trial lots; (5) freight and delivery; (6) price negotiation/customer communications; (7) sales calls and visits; (8) continuous technical service; (9) international travel; (10) currency risks; (11) sales forecasting and market research; (12) providing rebates; and (13) warranty services, the level of performance for both direct shipments and sales from inventory was identical across all types of customers. Only a few functions exhibited differences, including: (1) Inventory maintenance/just-in-time performance; (2) further processing; (3) credit and collection; (4) low volume orders; and (5) shipment of small packages. *See* Mexinox's AQR at Attachment A-4-C. While we find differences in the levels of intensity performed for some of these functions, such differences are minor and do not establish distinct LOTs in Mexico. Based on our analysis of all of Mexinox S.A.'s home market selling functions, we preliminarily find all home market sales were made at the same LOT, the NV LOT.

We then compared the NV LOT, based on the selling functions associated with the transactions between Mexinox S.A. and its customers in the home market, to the CEP LOT, which is based on the selling functions associated with the transaction between Mexinox S.A. and its affiliated importer, Mexinox USA. Our analysis indicates the selling functions performed for home market customers are either performed at a higher degree of intensity or are greater in number than the selling functions performed for Mexinox USA. *See* Mexinox's AQR at pages A-40 through A-45 and Attachments A-4-A through A-4-C. For example, in comparing Mexinox's selling functions, we find there are more functions performed in the home market which are not a part of CEP transactions (*e.g.*, pre-sale technical assistance, sample analysis, prototypes and trial lots, price negotiation/customer communications, price negotiations/customer communications, inventory maintenance/just-in-time performance,

international travel, currency risks, sales forecasting and market research, providing rebates, sales calls and visits, credit and collection, and warranty services). For selling functions performed for both home market sales and CEP sales (*e.g.*, processing customer orders, freight and delivery arrangements, further processing, low volume orders, and shipment of small packages), we find Mexinox S.A. actually performed each activity at a higher level of intensity in the home market. *See* Mexinox's AQR at Attachment A-4-C. Based on Mexinox's responses, we note that CEP sales from Mexinox S.A. to Mexinox USA generally occur at the beginning of the distribution chain, representing essentially a logistical transfer of inventory that resembles ex-factory sales. *See* Mexinox's AQR at page A-42 and at Attachment A-4-A. In contrast, sales in the home market (including sales to Mexinox Trading) occur closer to the end of the distribution chain and involve smaller volumes and more customer interaction which, in turn, require the performance of more selling functions. *See* Mexinox's AQR at pages A-43 A-44 and Attachments A-4-A through A-4-C. Based on the above-mentioned information, we preliminarily conclude the NV LOT is at a more advanced stage than the CEP LOT.

Because we found the home market and U.S. sales were made at different LOTs, we examined whether a LOT adjustment or a CEP offset may be appropriate in this review. As we found only one LOT in the home market, it was not possible to make a LOT adjustment to home market sales, because such an adjustment is dependent on our ability to identify a pattern of consistent price differences between the home market sales on which NV is based and home market sales at the LOT of the export transaction. *See* 19 CFR 351.412(d)(1)(ii). Furthermore, we have no other information that provides an appropriate basis for determining a LOT adjustment. Because the data available do not form an appropriate basis for making a LOT adjustment, and because the NV LOT is at a more advanced stage of distribution than the CEP LOT, we have preliminarily made a CEP offset to NV in accordance with section 773(a)(7)(B) of the Act.

#### Constructed Export Price

Mexinox indicated it made CEP sales through its U.S. affiliate, Mexinox USA, in the following four channels of distribution: (1) Direct shipments to unaffiliated customers; (2) stock sales

from the San Luis Potosi factory; (3) sales to unaffiliated customers through Mexinox USA's warehouse inventory; and (4) sales through Ken-Mac.<sup>9</sup> *See* Mexinox's AQR at pages A-32 through A-35.

In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. We preliminarily find Mexinox properly classified all of its U.S. sales of subject merchandise as CEP transactions because such sales were made in the United States through Mexinox USA or Ken-Mac to unaffiliated purchasers. We based CEP on packed prices to unaffiliated purchasers in the United States sold by Mexinox USA or its affiliated reseller, Ken-Mac. We made adjustments for billing adjustments, discounts and rebates, where applicable. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act, including foreign inland freight, foreign brokerage and handling, inland insurance, U.S. customs duties, U.S. inland freight, U.S. brokerage and handling, and U.S. warehousing expenses. As directed by section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*i.e.*, credit expenses, warranty expenses, and a certain expense of proprietary nature (*see* Mexinox's CQR at pages C-49 through C-50)), inventory carrying costs, packing costs, and other indirect selling expenses. We also made an adjustment for profit in accordance with section 772(d)(3) of the Act. We used the expenses as reported by Mexinox made in connection with its U.S. sales, with the exception of the U.S. indirect selling expense ratio which we recalculated. *See* Preliminary Analysis Memorandum.

For sales in which the material was sent to an unaffiliated U.S. processor, we made an adjustment based on the transaction-specific further-processing expenses incurred by Mexinox USA. In addition, the U.S. affiliated reseller, Ken-Mac, performed some further manufacturing for its sales to

<sup>9</sup> Ken-Mac is an affiliated service center located in the United States which purchases S4 in coils produced by Mexinox S.A. and then resells the merchandise (after, in some instances, further manufacturing) to unaffiliated U.S. customers. *See* Mexinox's AQR at pages A-15 through A-16.



unaffiliated U.S. customers. For these sales, we deducted the cost of further processing in accordance with section 772(d)(2) of the Act. In calculating the cost of further manufacturing for Ken-Mac, we relied upon Ken-Mac's reported cost of further manufacturing materials, labor and overhead. We also included amounts for further manufacturing general and administrative expenses (G&A), as reported in Mexinox's cost database submitted in its SSDQR, except where adjusted as noted above.

## Normal Value

### A. Cost Averaging Methodology

The Department's normal practice is to calculate an annual weighted-average cost for the entire POR. *See, e.g., Certain Pasta From Italy: Final Results of Antidumping Duty Administrative Review*, 65 FR 77852 (December 13, 2000), and accompanying Issues and Decision Memorandum at Comment 18, and *Notice of Final Results of Antidumping Duty Administrative Review of Carbon and Certain Alloy Steel Wire Rod from Canada*, 71 FR 3822 (January 24, 2006), and accompanying Issues and Decision Memorandum at Comment 5 (explaining the Department's practice of computing a single weighted-average cost for the entire period). However, the Department recognizes that possible distortions may result if our normal annual average cost method is used during a period of significant cost changes. In determining whether to deviate from our normal methodology of calculating an annual weighted average cost, the Department evaluates the case-specific record evidence using two primary factors: (1) The change in the cost of manufacturing (COM) recognized by the respondent during the POR must be deemed significant; and (2) the record evidence must indicate that sales during the shorter averaging periods could be reasonably linked with the cost of production (COP) or CV during the same shorter averaging periods. *See Stainless Steel Plate in Coils From Belgium: Final Results of Antidumping Duty Administrative Review*, 73 FR 75398, 75399 (December 11, 2008) (*SSPC from Belgium*) and accompanying Issues and Decision Memorandum at Comment 4; *see also 2006–2007 Final Results* and accompanying Issues and Decision Memorandum at Comment 5.

#### 1. Significance of Cost Changes

In prior cases, the Department established 25 percent as the threshold (between the high and low quarterly COM) for determining that the changes

in COM are significant enough to warrant a departure from our standard annual costing approach. *See SSPC from Belgium* and accompanying Issues and Decision Memorandum at Comment 4; *see also 2006–2007 Preliminary Results* at 45709–45710, unchanged in *2006–2007 Final Results* and accompanying Issues and Decision Memorandum at Comment 5. In the instant case, record evidence shows that Mexinox experienced significant changes (*i.e.*, changes that exceeded 25 percent) between the high and low quarterly COM during the POR and that the change in COM is primarily attributable to the price volatility for nickel, a major input consumed in the production of the austenitic hot-rolled stainless steel coil purchased by Mexinox, and then used to produce some of the merchandise under consideration. *See* “Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—ThyssenKrupp Mexinox S.A. de C.V.,” from Sheikh Hannan, Senior Accountant, to Neal M. Halper, Director, Office of Accounting, dated July 31, 2009 (Cost Calculation Memorandum). In examining both the company-specific inventory records for austenitic hot-rolled stainless steel coil and global market pricing indices for nickel, we found that nickel prices changed dramatically throughout the POR and consequently directly affected the cost of the material inputs consumed by Mexinox. *See* Cost Calculation Memorandum. Specifically, the record data shows that the percentage difference between the high and low quarterly COM for the austenitic grades of products clearly exceeded 25 percent during the POR. *See* Cost Calculation Memorandum. As a result, we have determined for the preliminary results that the changes in COM for austenitic grades for Mexinox are significant enough to warrant a departure from our standard annual costing approach, as these significant cost changes create distortions in the Department's sales-below-cost test as well as the overall margin calculation.

#### 2. Linkage Between Cost and Sales Information

As noted above, the Department preliminarily found cost changes to be significant in this administrative review; thus the Department subsequently evaluated whether there is evidence of linkage between the cost changes and the sales prices during the POR. The Department's definition of linkage does not require direct traceability between specific sales and their specific production cost, but rather relies on whether there are elements which

would indicate a reasonable correlation between the underlying costs and the final sales prices levied by the company. *See 2006–2007 Final Results* and accompanying Issues and Decision Memorandum at Comment 5; *see also SSPC from Belgium* and accompanying Issues and Decision Memorandum at Comment 4. These correlative elements may be measured and defined in a number of ways depending on the associated industry, and the overall production and sales processes.

In the instant case, Mexinox employs an alloy surcharge mechanism. As articulated in *2006–2007 Final Results* (and accompanying Issues and Decision Memorandum at Comment 5) and *SSPC from Belgium* (and accompanying Issues and Decision Memorandum at Comment 4), through the alloy surcharge levied on all sales during the POR, there is a linkage between the volatile direct material costs and final sale prices. Specifically, the alloy surcharge mechanism links the nickel acquisition and consumption costs to the market prices promulgated by the London Metal Exchange (LME). *See, e.g., 2006–2007 Preliminary Results* at 45709, unchanged in *2006–2007 Final Results*. The alloy surcharge regime is a common business practice in the stainless steel industry, whereby the changes in material costs realized by producers during the months preceding the date of sale are measured based on the LME and ultimately passed on to its final customers. *See 2006–2007 Preliminary Results* at 45709, unchanged in *2006–2007 Final Results*. The alloy surcharge figure does not need to directly correspond to changes in the price of the applicable raw material used in the production to which the surcharge applies. The surcharge amount is, by design, a mechanism developed to account for raw material price changes. This alloy surcharge mechanism, as noted above, allows companies to pass on the changes in raw material costs to their customers, thereby establishing a reasonable link between the underlying costs and sales prices.

In light of the two factors discussed above, a significant change in COM between the high and low quarters exists and a reasonable linkage between cost and sales information exists through the alloy surcharge mechanism. Accordingly, we have preliminarily determined that a quarterly costing approach would lead to more appropriate comparisons in our antidumping duty calculations for austenitic products. Therefore, we preliminarily used quarterly indexed annual average direct material costs and annual weighted-average conversion

costs in the COP and CV calculations for austenitic products. For those products reported that do not contain nickel (e.g., ferritic grade products), we have continued to use a single weighted-average total COM for the POR.

#### B. Selection of Comparison Market

To determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (i.e., the aggregate volume of home market sales of the foreign like product is greater than five percent of the aggregate volume of U.S. sales), we compared Mexinox's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Act. Because Mexinox's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for subject merchandise, we determined the home market was viable. See, e.g., Mexinox's SSQR at Attachment B-32 (home market sales database) and at Attachment C-33 (U.S. sales database).

#### C. Affiliated Party Transactions and Arm's Length Test

Sales to affiliated customers in the home market not made at arm's length prices are excluded from our analysis because we consider them to be outside the ordinary course of trade. See section 773(f)(2) of the Act; see also 19 CFR 351.102(b). Consistent with 19 CFR 351.403(c) and (d) and agency practice, "the Department may calculate NV based on sales to affiliates if satisfied that the transactions were made at arm's length." See *China Steel Corp. v. United States*, 264 F. Supp. 2d 1339, 1365 (CIT 2003). To test whether the sales to affiliates were made at arm's length prices, we compared, on a model-specific basis, the starting prices of sales to affiliated and unaffiliated customers, net of all direct selling expenses, billing adjustments, discounts, rebates, movement charges, and packing. Where prices to the affiliated party are, on average, within a range of 98 to 102 percent of the price of identical or comparable merchandise to the unaffiliated parties, we determine that the sales made to the affiliated party are at arm's length. See *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186, 69194 (November 15, 2002). In this review, however, we found that prices to affiliated parties were, on average, outside of the 98 to 100 percent of the price of identical or comparable subject merchandise sold to unaffiliated

parties. Accordingly, we found both affiliated home market customers failed the arm's length test and, in accordance with the Department's practice, we excluded sales to these affiliates from our analysis.

#### D. Cost of Production Analysis

Because we disregarded sales of certain products made at prices below the COP in the most recently completed review of S4 in coils from Mexico (see 2006-2007 Preliminary Results at 45713-45714, unchanged in 2006-2007 Final Results), we had reasonable grounds to believe or suspect that sales of the foreign like product under consideration for the determination of NV in this review for Mexinox may have been made at prices below the COP, as provided by section 773(b)(2)(A)(ii) of the Act. Pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of sales by Mexinox. We relied on home market sales and COP information provided by Mexinox in its questionnaire responses, except where noted below:

Using Mexinox's reported quarterly cost database for austenitic grades of product, we measured the cost changes, in terms of a percentage, to develop the direct material indices for each quarter within a specific austenitic stainless steel grade. We used these indices to calculate an annual weighted-average COP for the POR and then restate that annual average COP to each respective quarter on an equivalent basis.

ThyssenKrupp Nirosta GmbH (TKN) and ThyssenKrupp AST, S.p.A. (TKAST), hot-rolled stainless steel coil producers affiliated with Mexinox, sold hot-rolled stainless steel coil to Mexinox USA, which in turn sold hot-rolled stainless steel coil to Mexinox S.A. Hot-rolled stainless steel coil is considered a major input to the production of S4 in coils. Section 773(f)(3) of the Act (the major input rule) states:

If in the case of a transaction between affiliated persons involving the production by one of such persons of a major input to the merchandise, the administering authority has reasonable grounds to believe or suspect that an amount represented as the value of such input is less than the cost of production of such input, then the administering authority may determine the value of the major input on the basis of the information available regarding such cost of production, if such cost is greater than the amount that would be determined for such input under paragraph (2).

Paragraph 2 of section 773(f) of the Act (transactions disregarded) states:

A transaction directly or indirectly between affiliated persons may be disregarded if, in the case of any element of

value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales of merchandise under consideration in the market under consideration. If a transaction is disregarded under the preceding sentence and no other transactions are available for consideration, the determination of the amount shall be based on the information available as to what the amount would have been if the transaction had occurred between persons who are not affiliated.

In accordance with the major input rule, and as stated in the 2006-2007 Preliminary Results at 45714, unchanged in 2006-2007 Final Results, it is the Department's normal practice to use all three elements of the major input rule (i.e., transfer price, COP and market price) where available.

For these preliminary results, we evaluated the transfer prices between Mexinox and its affiliated hot-rolled stainless steel coil suppliers on a grade-specific basis. For certain grades of hot-rolled stainless steel coil, all three elements of the major input analysis were available. These grades of hot-rolled stainless steel coil account for the majority of volume of hot-rolled stainless steel coil that Mexinox purchased from TKN and TKAST during the POR. As such, we find these purchases provide a reasonable basis for the Department to measure the preferential treatment, if any, given to Mexinox for purchases of hot-rolled stainless steel coil from TKN and TKAST during the POR. Therefore, we adjusted the reported costs to reflect the higher of transfer prices, COP, or market prices of hot-rolled stainless steel coil, where available. Additionally, if necessary, we relied on these results to adjust the reported cost for grades where all three elements of the major input were not available. See Cost Calculation Memorandum.

Because we have determined that shorter cost periods are appropriate for the COP analysis of austenitic grades, we have performed the major input analysis on a quarterly basis for all grades of austenitic hot-rolled stainless steel coil. For all other grades of hot-rolled stainless steel coil, we have performed the cost-based part of the major input analysis on a POR basis.

We revised Mexinox's G&A expenses to include employee profit sharing expenses and exclude gains on the sales of land and a warehouse. Further, we disallowed the offsets to the G&A expenses for the revenues earned from the recovery of accounts receivables, payments for certificate of material origin requested by customers, ECS fees, lease, travel expenses, and freight because the corresponding expense



items are reported by Mexinox as selling activities. We also revised the denominator used by Mexinox to calculate the G&A expense rate by several items to allow for symmetry between the way the rate was calculated and the application of the rate. In addition, we adjusted the denominator of the financial expense ratio to exclude the packing expenses and include the major input adjustments. *See Cost Calculation Memorandum.*

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether, within an extended period of time, such sales were made in substantial quantities, and whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. As noted in section 773(b)(1)(D) of the Act, prices are considered to provide for recovery of costs if such prices are above the weighted average per-unit COP for the period of investigation or review. In the instant case, we have relied on a quarterly costing approach for austenitic grades of merchandise. Similar to that used by the Department in cases of high-inflation (*see, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Products from Indonesia*, 64 FR 73164 (December 29, 1999) at Comment (1), this methodology restates the quarterly costs on a year-end equivalent basis, calculates an annual weighted-average cost for the POR and then restates it to each respective quarter. We find that this quarterly costing method meets the requirements of section 773(b)(2)(D) of the Act.

Where less than 20 percent of the respondent's home market sales of a given model were at prices below the COP, we did not disregard any below-cost sales of that model because we determined that the below-cost sales were not made within an extended period of time and in "substantial quantities." Where 20 percent or more of the respondent's home market sales of a given model were at prices less than the COP, we disregarded the below-cost sales because: (1) They were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act; and (2) based on our comparison of prices to the weighted-average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

Our cost test for Mexinox revealed that, for home market sales of certain models, less than 20 percent of the sales of those models were at prices below the COP. We therefore retained all such sales in our analysis and used them as the basis for determining NV. Our cost test also indicated that for home market sales of other models, more than 20 percent were sold at prices below the COP within an extended period of time and were at prices which would not permit the recovery of all costs within a reasonable period of time. Thus, in accordance with section 773(b)(1) of the Act, we excluded these below-cost sales from our analysis and used the remaining above-cost sales as the basis for determining NV.

#### *E. Constructed Value*

In accordance with section 773(e) of the Act, we calculated CV based on the sum of Mexinox's material and fabrication costs, SG&A expenses, profit, and U.S. packing costs. We calculated the COP component of CV as described above in the "Cost of Production Analysis" section of this notice. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

#### *F. Price-to-Price Comparisons*

We calculated NV based on prices to unaffiliated customers. Mexinox S.A. reported home market sales in Mexican pesos, but noted certain home market sales were invoiced in U.S. dollars during the POR. *See Mexinox's BQR* at pages B-26 and B-27. In our margin calculations, we used the currency of the sale invoice at issue and applied the relevant adjustments in the actual currency invoiced or incurred by Mexinox. We accounted for billing adjustments, discounts, and rebates, where appropriate. We also made deductions, where appropriate, for foreign inland freight, insurance, handling, and warehousing, pursuant to section 773(a)(6)(B) of the Act. In addition, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise compared pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We also made adjustments for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. In particular, we made COS adjustments for imputed credit expenses and warranty expenses. As noted above

in the "Level of Trade" section of this notice, we also made an adjustment for the CEP offset in accordance with section 773(a)(7)(B) of the Act. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act.

We used Mexinox's home market adjustments and deductions as reported. For purposes of these preliminary results, we have accepted Mexinox's reporting of the handling expenses incurred by Mexinox's home market affiliate, Mexinox Trading and imputed credit expenses based on reported payment dates. However, in order to be consistent with past administrative reviews of this case, we intend to request additional information regarding these handling expenses and the actual date of payment for these sales after the issuance of these preliminary results, and address these issues in our final results. *See Preliminary Analysis Memorandum. See, e.g., 2006-2007 Final Results and accompanying Issues and Decision Memorandum at Comment 1; see also 2005-2006 Preliminary Results at 43605, 2005-2006 Final Results, and 2005-2006 Amended Final Results; see also 2004-2005 Preliminary Results at 35623 (unchanged in 2004-2005 Final Results).*

#### *G. Price-to-CV Comparisons*

Where we were unable to find a home market match of such or similar merchandise, in accordance with section 773(a)(4) of the Act, we based NV on CV. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act.

#### **Currency Conversion**

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales, as certified by Dow Jones Reuters Business Interactive, LLC (trading as Factiva), in accordance with section 773A(a) of the Act.

#### **Preliminary Results of Review**

As a result of our review, we preliminarily find that the following weighted-average dumping margin exists for the period July 1, 2007, through June 30, 2008:

Manufacturer/Exporter	Weighted average margin (percentage)
ThyssenKrupp Mexinox S.A. de C.V. ....	13.31

## Public Comment

The Department will disclose calculations performed within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter, unless the Department alters the date per 19 CFR 351.310(d). Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c). Rebuttal briefs limited to issues raised in the case briefs may be filed no later than five days after the time limit for submitting the case briefs. *See* 19 CFR 351.309(d). Parties who submit argument in these proceedings are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Further, parties submitting case briefs and/or rebuttal briefs are requested to provide the Department with an additional copy of the public version of any such argument on diskette. The Department will issue final results of this administrative review, including the results of our analysis of the issues in any such argument or at a hearing, within 120 days of publication of these preliminary results, unless extended. *See* section 751(a)(3)(A) of the Act and 19 CFR 351.213(h).

## Duty Assessment

Upon completion of this administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we will calculate importer-specific *ad valorem* assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties. The total customs value is based on the entered value reported by Mexinox for all U.S. entries of subject merchandise initially entered for consumption to the United States made during the POR. *See* Preliminary Analysis Memorandum. In accordance with 19 CFR 356.8(a), the Department intends to issue assessment instructions to CBP on or after 41 days following the publication of the final results of review.

The Department clarified its "automatic assessment" regulation on

May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the POR produced by the company included in these preliminary results for which the reviewed company did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company or companies involved in the transaction.

## Cash Deposit Requirements

Furthermore, the following cash deposit requirements will be effective for all shipments of S4 in coils from Mexico entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the reviewed company will be the rate established in the final results of this review, except if the rate is less than 0.50 percent (*de minimis* within the meaning of 19 CFR 351.106(c)(1)), the cash deposit will be zero; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the all-others rate of 30.85 percent, which is the all-others rate established in the LTFV investigation. *See Order*. These deposit requirements, when imposed, shall remain in effect until further notice.

## Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: July 31, 2009.

**John M. Andersen,**

*Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. E9-19008 Filed 8-6-09; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-533-825]

### Polyethylene Terephthalate Film, Sheet, and Strip from India: Preliminary Results of Countervailing Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty order on polyethylene terephthalate (PET) film, sheet and strip from India for the period January 1, 2007, through December 31, 2007. We preliminarily determine that subsidies are being provided on the production and export of PET film from India. *See* the "Preliminary Results of Administrative Review" section, below. If the final results remain the same as the preliminary results of this review, we will instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties. Interested parties are invited to comment on the preliminary results of this administrative review. *See* the "Public Comment" section of this notice, below.

**EFFECTIVE DATE:** August 7, 2009.

**FOR FURTHER INFORMATION CONTACT:** Elfi Blum, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-0197.

## SUPPLEMENTARY INFORMATION:

### Background

On July 1, 2002, the Department published in the **Federal Register** the countervailing duty (CVD) order on PET film from India. *See Countervailing Duty Order: Polyethylene Terephthalate Film, Sheet and Strip (PET Film) from India*, 67 FR 44179 (July 1, 2002) (*PET Film Order*). On July 11, 2008, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of this order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity*